IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

THURSDAY, THE 14TH JUNE 2007 / 24TH JYAISHTA 1929

WP(C).No. 12505 of 2005(L)

AGAINST THE ORDER DATED 07/03/05 IN IA.No. 664/2004 IN OS.100/2004 of MUNSIFF'S COURT, RANNI

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PETITIONER:

AJAYAKUMAR P.R., OLICKAL HOUSE,
CHERUKULANJI P.O. VALIYAKULAM, PAZHAVANGADI,
RANNY TALUK, PATHANAMTHITTA DISTRICT.

BY ADV. SRI.R.MANOJ

RESPONDENTS:

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1. M/S/CHOLAMANDALAM INVESTMENT AND FINANCE COMPANY LTD., TIAM HOUSE, 2ND FLOOR, OLD NO.28,(NEW NO.72), RAJAJI SALAI, CHENNAI 600 001.

2. M./S.CHOLAMANDALAM INVESTMENT AND FINANCE COMPANY LTD., NO. 2ND FLOOR, ENSIGN ENCLAVE, JOSE JUNCTION, M.G.ROAD, KOCHI 11. (BRANCH OF IST RESPONDENT).

BY ADV. SRI.PHILIP T.VARGHESE
SRI.THOMAS T.VARGHESE

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 14/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WPC.12505/05

APPENDIX

PETITIONER'S EXTS:

EXT.P1 – TRUE COPY OF NOTICE ISSUED TO PETR. BY RESPONDENTS DT.1.8.01.

EXT.P2 – TRUE COPY OF REPLY SENT BY PETR. TO EXT.P1, DT.17.12.01.

EXT.P3 – TRUE COPY OF CERTIFICATE ISSUED BY THE BANKERS OF PETR., VIZ., DHANALAKSHMY BANK,DT.6.4.05.

EXT.P4 – TRUE COPY OF PLAINT IN OS.100/04 OF MUNSIFF'S COURT, RANNY.

EXT.P5 – TRUE COPY OF WRITTEN STATEMENT FILED BY RESPONDENTS BEFORE COURT BELOW, DT.19.5.04.

EXT.P6 – TRUE COPY OF INTERLOCUTORY APPLICATION AND PETITION FILED BY DEFENDANTS BEFORE THE COURT BELOW DT.19.5.04.

EXT.P7 – TRUE COPY OF OBJECTION FILED BY PETR. DT.22.6.04.

EXT.P8 – TRUE COPY OF HIRE PURCHASE AGREEMENT, DT.22.6.00

EXT.P9 TRUE COPY OF ORDER PASSED BY COURT BELOW, ALLOWING EXT.P6 I.A. DT.7.3.05.

/TRUE COPY/

PIUS C. KURIAKOSE, J.

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W.P.(C)No.12505 OF 2005

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DATED THIS THE 14TH JUNE, 2007

J U D G M E N T

Ext.P9 order passed by the learned Munsiff staying all further proceedings in a suit for injunction filed by the petitioner-plaintiff seeking to restrain forcible repossession of a vehicle on the ground that he has paid off all the amounts which are due to the respondent-company on account of the hire purchase transaction and referring the parties to arbitration under the provisions of the Arbitration and Conciliation Act, 1996 is under challenge in this Writ Petition under Article 227 of the Constitution.

2. Heard both sides.

3. Having considered the submissions and having gone through the impugned order, I am of the view that there is no warrant at all for interfering with the same in this Court's visitorial jurisdiction. As rightly noticed by the learned Munsiff, it is obligatory on the terms of Section 8 of the Act that the judicial authority before whom action is sought in a matter which is subject of an arbitration agreement shall refer the parties to arbitration. The argument of the petitioner that the suit being one simpliciter for injunction does not come within Section 8 of the Act cannot receive acceptance, since admittedly there

is a dispute between the parties as to whether the liabilities of the petitioner under the hire purchase agreement containing arbitration clause have been discharged. The learned Munsiff has rightly referred to and followed the judgment of the Supreme Court in **Hindustan Petroleum Corpn. Ltd. v. Pinkcity Midway Petroleums** [(2003) 6 SCC 503].

The challenge against the impugned order fails. The Writ Petition is dismissed. No costs.

(PIUS C.KURIAKOSE, JUDGE)

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